

# **The Illinois Cemetery & Funeral Home Association**

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**A Resource for Understanding  
The Industry, Its Practices and Relevant Laws**

**September 2009**

Illinois Cemetery & Funeral Home Association

[www.icfha.org](http://www.icfha.org)

866-758-7731

## Table of Contents

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I. Executive Summary	Tab I
II. History and Overview of Industry	Tab II
A. Development of Cemetery Law in the United States and in Illinois ... ..	3
B. Development of Cemetery Law in Illinois ... ..	5
C. Various Types of Cemeteries ... ..	7
III. How the Industry Works: Transactions and Arrangements	Tab III
A. Buying Services and Merchandise ... ..	10
B. Interment Options ... ..	11
C. Multiple Depth and Alternative Interments ... ..	13
D. Low Cost Arrangements and the Public Sector ... ..	15
IV. How the Industry Works: Operations and Economics ... ..	Tab IV
A. Cemetery Operations ... ..	16
B. Recordkeeping ... ..	17
C. Specific Operational Issues ... ..	18
D. Operations and Economics ... ..	19
E. Reasonable Levels of Maintenance ... ..	20
V. The Events at Burr Oak	Tab V
A. What Is Currently Alleged ... ..	21
B. Existing Laws ... ..	23
C. How Could This Have Been Prevented? ... ..	27
VI. Recommended Legislation	Tab VI
VII. Addenda	Tab VII
A. Hart Island ... ..	34
B. Jewish Burial Societies in New York... ..	36
C. IDHS Guidelines ... ..	39
D. How to Choose a Cemetery in Illinois: A Consumer Guide ... ..	40
E. <i>SouthtownStar</i> Editorial, July 16, 2009 ... ..	41
F. <i>Wall Street Journal</i> Article, July 18, 2009 ... ..	42
G. Harvey I. Lapin Resume ... ..	43
H. Consumer Bill of Rights ... ..	44

## **Executive Summary**

The events at Burr Oak were utterly contemptible, eminently illegal and entirely anomalous to Illinois' large and diverse cemetery industry, which defies generalizations.

There are over 14,000 cemeteries in the state, most of which are inactive. There are approximately 5,200 cemeteries which have registered with the Illinois State Comptroller's Office. Very few of them, in fact, perform more than one or two interments a month. There are many different styles of the cemeteries. There are cemeteries that have care funds and those that do not; cemeteries that sell pre-need services and merchandise and those that do not; and there are ten different ownership models, ranging from fraternal, to religious, to municipal or federal, to non-profit. Even among privately owned cemeteries, there is a range from small family-owned cemeteries to corporately owned enterprises.

Many if not most cemeteries operate either with tiny margins or continue to operate with volunteers. Most perform only a handful of interments in a year, and only few perform as many as two or three per day. Some have financial resources in the form of endowed care funds, which are regulated by the State, but most do not. Some are supported by outside organizations, such as a township, fraternal order or religious organization.

There is no such thing as a standard interment. Cemeteries offer a wide range of interment options, and different cemeteries offer different options. Some have mausoleums, some of which are above ground and some below. Some have columbariums, some offer green burials and many offer some form of multiple depth interment. These multiple depth interments have gained a sudden notoriety as people struggle to make sense of the events at Burr Oak, but the practice itself is not unusual.

In the same way there are other aspects of the cemetery industry which have come to light in the context of the Burr Oak events which may seem sinister when they are actually innocent. For instance, it should not be unexpected that bones are sometimes found at older cemeteries: bones are what a cemetery's grounds are full of, and concrete burial vaults are a relatively recent innovation. For many years, only wooden caskets were used in burials. Over the course of decades and centuries, bodies and caskets decompose, soils move and bones occasionally surface. When they are discovered, they are respectfully returned to their rightful location. These innocent and entirely common-sense occurrences are entirely unrelated to the wanton crimes discovered at Burr Oak, and no conclusions should be drawn from the one about the other.

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The complexity of the industry makes it difficult to find reforms that are subtle enough to fit all the diverse kinds of cemeteries and offerings. A reform that may be well-suited for one aspect of the industry could easily have huge repercussions in another place.

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It is understandable and entirely appropriate to look for answers and for ways to ensure that, to the greatest extent possible, no situation like that Burr Oak will ever occur again. However, the complexity of the industry makes it difficult to find reforms that are subtle enough to fit all the many diverse kinds of cemeteries and the various offerings. A reform that may be well-suited for one aspect of the industry could easily have huge repercussions in another place. Reforms that only impact one segment of the industry could distort an already less than fully even playing field. And over-aggressive reforms could put a number, and potentially a large number, of cemeteries into receivership, or raise the cost of cemetery services beyond what some families could afford or beyond what Public Aid or the county could cover.

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In order to create a level playing field and to ensure that all consumers benefit from the same protections, it is necessary to deal even-handedly with the full range of cemeteries.

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In this spirit, the ICFHA does offer a program of suggested reforms to clarify existing laws and penalties, and to afford greater consumer protections. We believe that these proposals will help ensure that families can more appropriately and intentionally purchase the merchandise and services that best serve their needs, and to help ensure that they are fully informed about the arrangements they are obtaining.

This program of suggested reforms applies to all cemeteries because approximately 60% of the interments in Illinois are performed by cemeteries that are exempt from most of the current laws. In order to create a level playing field and to ensure that all consumers benefit from the same protections, it is necessary to deal even-handedly with the full range of cemeteries.

## II A

# **Development of Cemetery Law in the United States**

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### **The Laws Covering Cemeteries in the United States**

Many of the early laws in the United States were derived from English law. In fact, most state constitutions actually refer to an effective date for the use of the English Common Law cases for precedent purposes.

However, this is not true with respect to laws governing cemeteries. This is because during the early settlement of this country all the cemeteries in England were religiously operated, which meant that there was no English statutory or case law until the 1850s. There was Ecclesiastical law and rulings which covered some aspects of burial in England, but in this country Ecclesiastical law never became part of the laws of the states. Nonetheless, because the original cemeteries in the colonies were often related to religious organizations, some of these rules did become incorporated in those states.

The development of cemetery law in the United States was succinctly described by Percival E. Jackson in the landmark book from 1950 titled *The Law of Cadavers*. In it he states:

“ Before the enactment of general statutes authorizing and regulating cemetery corporations throughout the United States, the control of churchyards was vested in the trustees of the respective religious societies controlling them, under the general or special acts under which they were organized. In rural communities church cemeteries were and are common, but right of burial therein in the United States is largely derivative of membership in the religious society rather than being a privilege of geographical location. We also have public burial grounds in this country, controlled by the municipality or other public authorities; as in England under the burial acts, the various states of the United States have authorized the organization of non-religious societies, profit and non-profit making for the acquisition and maintenance of private and public burial grounds, wholly separate and apart from those maintained by the churches and other religious societies. These societies are by statute authorized to regulate burial in their respective cemeteries with or without regard to religious practice or creed.

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**The wide variety of cemeteries in Illinois reflects the variety of traditions out of which they arose, and the complex demands of the markets they serve.**

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“The control of burial in the United States is now wholly secular, affected by ecclesiastical dictates only to the extent that a religious corporation owns a burial ground. The control of burial is affected similarly by lay ownership of a public or

private cemetery.

“The consideration of the law of burial must now depend almost wholly upon the provisions of statute which supplements and, in great measure, supersede both the common law and the equitable principles derived from practices and customs that are based upon the ecclesiastical tenets and regulations once exclusively controlling burial.”

This legal situation caused cemeteries to be established in different ways in the various states in this country. The states in New England that were settled early allow the establishment of cemeteries only by municipalities and religious organizations. The laws of New York and New Jersey provide that non-governmental cemeteries can only be established on a nonprofit basis, but those laws allowed the issuance of voting certificates of interest or voting certificates of indebtedness to finance the cemeteries so that as a practical matter the larger cemeteries in those states are really controlled by private interests. Ohio also restricted the establishment of cemeteries to municipalities, religious organization and nonprofit corporations, but it allowed nonprofit corporations to have a sales and management arrangement with a for-profit entity. Pennsylvania and most of the other states in the United State allow the establishment of all types of cemeteries.

## **Development of Cemetery Law in Illinois**

### **The Laws Covering Cemeteries in Illinois**

The development of cemeteries in Illinois followed many of these concepts. During the 1800s, the Illinois state legislature established the basis for the development of cemeteries. Various laws and special acts were enacted giving private and public interests the ability to establish cemeteries in different forms.

One of the first of these laws to be enacted allowed the establishment of a religious corporation to own and operate cemeteries. Since there was no general corporate law in Illinois until 1870, the legislature generally issued a special charter to people interested in establishing non-religious cemeteries. These special charters provided for the powers of the corporation to acquire land, to develop the land and to operate the cemeteries.

Graceland and Rose Hill Cemeteries in Chicago, for example, were established under special charters. At the time those cemeteries were established, they were outside the city limits of Chicago, but as the city grew disputes arose resulting in litigation concerning the powers of the special chartered corporations and a municipality's ability to control the cemeteries development and operation. For example, see the case of *Town of Lakeview v. Letz* 44 Ill 81 (1867).

The legislature also empowered municipalities to establish cemeteries and gave them the power to take over cemeteries that were already located in the areas that became governed by the municipality as they expanded. At the time the Lakeview case was decided both the Town of Lakeview and Rosehill Cemetery were outside of the corporate limits of the City of Chicago. Now both are well inside those corporate limits.

In 1903 the state legislature also passed the Cemetery Association Act (805 ILCS 320) that provided for a group of at least six or more persons to organize a Cemetery Association. When the state legislature enacted the general corporation law in the 1870s, cemeteries could also be established as regular corporations, or even as general nonprofit corporations once the General Nonprofit Corporation Act was enacted.

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**Illinois has different types of cemeteries organized in various ways. Any changes in the law must be carefully considered so as not to affect the delicate balance between different types of cemeteries.**

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The future care of a cemetery has been always an issue. The municipal cemeteries, of course, could use the municipality's ability to tax as a basis for developing funds for the maintenance of cemeteries. Religious organizations could rely on their members to provide support as long as those organizations remained active. Cemetery associations and for-profit cemeteries, however, had to develop different mechanisms to fund ongoing and future maintenance. One of these mechanisms was the establishment of an endowed trust to take care of the cemetery in the future. Some spe-

cial charter cemeteries had the authority to establish such trusts, but others did not. If a cemetery without such authority tried to establish such a fund, the Rule of Perpetuities might render that trust invalid.

Initially, there was litigation to get the courts to rule that these trusts were charitable to avoid this problem. Finally, the state legislature enacted the Cemetery Care Act which resolved this problem for cemeteries wanting to establish care funds. It was determined at that time that it was impractical to require all cemeteries to establish such funds, which is why the Cemetery Care Act only applies to those cemeteries that have established such funds. The Cemetery Care Act exempted religious, municipal and fraternal cemeteries.

It is because of this historical background that Illinois has different types of cemeteries organized in various ways. This is the reason that any changes in the law must be carefully considered so as not to affect the delicate balance between the operation of the different types of cemeteries.

## Various Types of Cemeteries

### Number and Types of Cemeteries in the United States

No one can be sure of the exact number of cemeteries in the United States. This is in part because of the wide variety of cemeteries, ranging from family burial grounds (such as one might find on family farms), religious cemeteries, fraternal cemeteries, municipal cemeteries, national cemeteries to the commercially active cemeteries. All told there are probably well over a million cemeteries in the country.

Most consumers are more familiar with what is often called the commercially active cemetery: a cemetery with an office, active management, advertising, active sales, frequent interments and active maintenance. There are commercially active cemeteries under every type described above in Illinois.

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The majority of burials performed in Illinois are not done at licensed cemeteries, nor are they performed at privately held cemeteries.

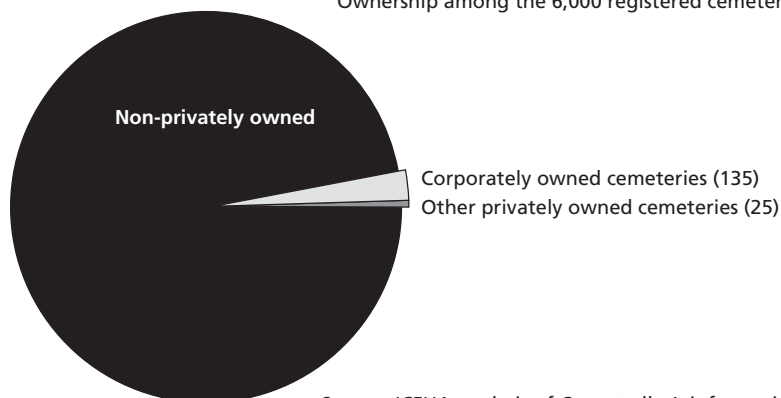
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### Number and Types of Cemeteries in Illinois

There are probably more than 14,000 Illinois cemeteries in Illinois (including a large number of one-acre inactive cemeteries). According to the Comptroller's office, approximately 6,000 of these cemeteries are registered, meaning that at some point there was an identifiable contact associated with the cemetery, and at some point a registration was submitted. Of these thousands of registered cemeteries, only about 739 are licensed to sell with care funds. The majority of interments performed in Illinois are not done at licensed cemeteries, nor are they performed at privately held cemeteries.

#### Types of Registered Cemeteries in Illinois

Ownership among the 6,000 registered cemeteries

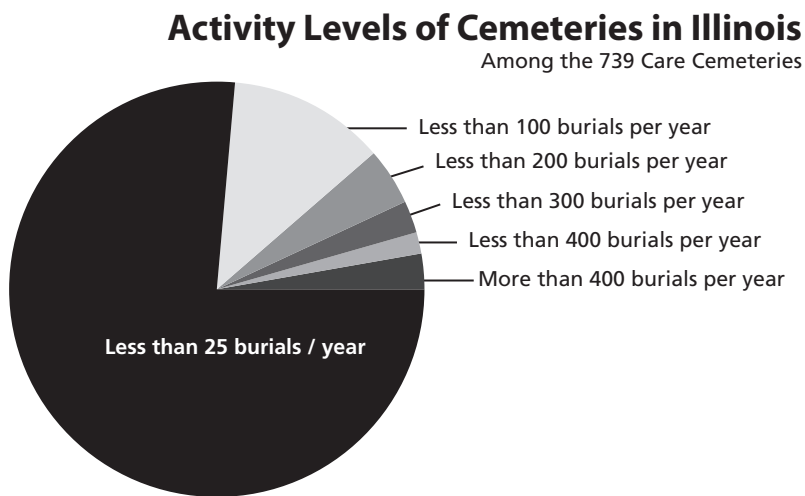


Source: ICFHA analysis of Comptroller's information, Rootsweb, and other industry data

Fewer than 750 cemeteries are licensed by the Comptroller's Office as "care fund" cemeteries, meaning that they maintain funds for their ongoing upkeep and maintenance, and those funds are

overseen by the Comptroller's office. (Some of those care funds are less than \$5,000.) There are 115 entities licensed to sell pre-need services and merchandise, and this number includes funeral homes and monument companies as well as cemeteries. Only 135 corporately owned cemeteries are licensed to sell with care.

Even these 739 cemeteries are very diverse. Many of them are smaller; over 550 perform 25 or fewer interments per year, and another 90 or so perform less than 100 per year. Of those 739 licensed cemeteries, only 160 could be considered to be privately held. The others are exempt cemeteries, meaning that they are religious, fraternal, municipal or family cemeteries. Most of those privately owned cemeteries are owned by corporations of one size or another, but the owners of a number are not organized as corporations. They are LLCs, sole proprietorships, trusts, or some



Source: ICFHA analysis of Comptroller's information

other model.

There are ten different types of cemeteries in Illinois:

- Privately held cemeteries;
- Non-profit cemeteries;
- Religious cemeteries;
- Historical cemeteries;
- National cemeteries;
- Municipal cemeteries;
- Township cemeteries;
- Fraternal cemeteries;
- Abandoned cemeteries; and
- Family cemeteries.

## **The Illinois Cemetery and Funeral Home Association**

The Illinois Cemetery and Funeral Home Association (ICFHA) is an Illinois state nonprofit trade association whose members consist primarily of companies that engage in the cemetery, funeral home and crematory industry businesses in the state of Illinois. ICFHA was established in 1928. These members range from very small family run businesses, municipal cemeteries, religious cemeteries, other non-profit cemeteries, to multi-unit regional companies and subsidiaries of national companies. Some of its members perform less than 25 interments a year and some perform up to 3,000 per year.

The mission statement of the ICFHA is to promote fellowship among cemetery and funeral home executives and officials throughout the State of Illinois, to create and maintain high ethical standards in the conduct of cemetery and funeral home administration; to meet and discuss mutual problems and exchange ideas on subjects pertaining to cemetery and funeral home development, operation, and management for mutual benefit and protection.

The ICFHA was the first organization in Illinois approved to certify crematory operators. It has over 20 courses in movie format that range from law, ethics, history, bloodborne pathogens, protective equipment, operations and so on.

The dues structure of ICFHA is graduated, so that the cemetery member with more interments pay higher dues. ICFHA also has a Small Member category at a substantial reduced dues structure and in many instances the dues for smaller cemeteries are waived. ICFHA has a mentoring system for small cemeteries to assist them in day to day activities.

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**The ICFHA engages in many activities for the benefit of consumers as well as for the benefit of its members.**

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The ICFHA has designations that require extensive participation in continuing education, working at a cemetery, and taking a written exam of 100 questions with another member being present. The most prominent designation is that of the Master Illinois Cemetery Professional. The test is based upon all of the courses that the ICFHA offers. The other designation, Illinois Cemetery Professional, has similar but less stringent requirements.

The ICFHA has a consumer advocate committee which assists consumers when they have a consumer issue. Many of these issues have been referred to the ICFHA by the Attorney General's Office and the Comptroller's Office. In the event the ICFHA is unable to resolve the complaint, the consumer is usually referred back to the Attorney General to request prosecution and is given the specific laws broken.

It should be clear that the ICFHA engages in many activities for the benefit of consumers as well as for the benefit of its members.

### III A

## **Buying Services and Merchandise**

A death in the family brings many challenges, but one of them is often the need to learn about how to make arrangements for their loved one. Many people do not know what all is involved, and they will often turn to a funeral home to manage the entire matter.

Sometimes a family will already have selected a cemetery, or may have family in a cemetery, or may even have pre-arranged interment rights in a cemetery. Often they do not bring any preference in cemeteries to the event, in which case a funeral home may offer suggestions. This point is important to note, because funeral homes and cemeteries operate entirely separate businesses.

Some funeral homes may still collect a cash advance for interment expenses, which they turn over to the cemetery at the time of the interment, which may lead some families to believe that they are getting one-stop shopping. In the past, some funeral home would even would actually arrange for a package including a interment contract. Sometimes, however, a family will still make arrangements through a funeral home or over the telephone. Now, however, some cemeteries require direct contact with the family. Some even require an on-site visit to select interment arrangements and to ensure that a family is getting the interment they want, and that the family understands the interment they are getting.

Typically an on-site visit affords a family the chance to examine the price sheet for the full range, to review the major rules and procedures of the cemetery, and to understand how the interment will work. Among the things that a family could learn from an on-site visit are:

- what they can expect to see if they return to visit their loved one;
- what kind of maintenance cemeteries can reasonably offer (such as how long it may take for grass to grow on a grave)
- when they should purchase a memorial marker; and
- what kind of interment rights they are purchasing.

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**An on-site visit affords a family the chance to examine the price sheet for the full range, to review the major rules and procedures of the cemetery, and to understand how the burial will work.**

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This last point is among the most widely discussed matters related to the Burr Oak events. There are a number of different options and different kinds of interment rights available, and these options are discussed in the next section (III B).

Although nothing can excuse the blatant criminality of the events uncovered at Burr Oak, some of the outrage over interment practices may be related to misunderstandings regarding arrangements which are not only legal, but may be widespread because of consumer demand.

## **Interment Options**

There are many different alternatives that are available for the disposition of human remains in this country and in this state. These alternatives vary in cost and are offered in response to the wide variety of preferences that families have in caring for their loved ones.

What cemeteries sell are easement rights for interment, entombment and inurnment. Although these rights are considered as personal property as listed in the IDHS guidelines for assets (see Appendix E), the Illinois courts generally consider interment rights to be easements in real property. The Cemetery Protection Act and the Illinois Pre-need Cemetery Sales Act refer to interment rights as an easement right.

Most people who haven't had to deal with the details of a loved one's death may not know too much more of the range of options available beyond burial or cremation. If they think of burial, they probably imagine a grassy "plot," six feet of earth, where their loved one will rest forever.

That classic grassy plot, or the titled interment right, is certainly very common, but even these kinds of interments can be sold in many different ways. Mausoleums and niches can be sold from one high to 12 high or more. These rights might be in single crypts or in tandem, meaning two caskets or urns can go in one crypt. Interment rights may be sold in single depth locations or multiple depth locations, with arrangements all the way up to seven deep or more, depending on the cemetery.

All kinds of cemeteries, and indeed almost all cemeteries including veterans cemeteries, offer multiple depth interments. For instance, it is not uncommon for husband and wife to be buried together in the same location, one atop the other. Persons who are not related may also be buried together in a multiple depth grave if all parties authorize it in advance. These arrangements are not unusual, and are found in most parts of the country.

An interment right may be sold as a titled right in a single location or multiple depth, or a alternative right which allows the cemetery the right to perform additional interments in the space above an interment after a certain period of time. What this means in practice is that a family is able to arrange for a respectful interment for their loved one, and the cemetery agrees to maintain the location of the remains and to keep a record of the location. At some later date, depending on the agreement, more soil may be added and an additional interment can take place in the space above. This interment will also remain in place, and records will also be maintained.

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All kinds of cemeteries, and indeed almost all cemeteries, offer multiple depth burials. Persons who are not related may also be buried together in a multiple depth grave if all parties authorize it in advance. These arrangements are not unusual, and are found in most parts of the country.

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There is an increasingly high demand for multiple depth and alternative interments. Many seek these arrangements as an alternative to cremation. In addition, many counties and states are experiencing an increasing in indigent cases, so the demand for these types of interments is increasing. The practices of multiple depth and alternative interments are examined more fully in the next section, III C.

Cremation has increased in favor in recent years for many reasons, including that cremation is perceived as environmentally friendly and inexpensive. The cremation process involves heating the body with a combustible container in a cremation unit and afterwards pulverizing the bone fragments. The cremated remains are then put into a container to be returned to the designated survivors.

There are other arrangements which are not at all uncommon in the industry, either in Illinois or indeed throughout the country. In-line interments, multiple depth interments and other alternatives are arrangements which many cemeteries offer and which many families choose. These arrangements are discussed at length in Section III. C. What is alleged to have occurred at Burr Oak involved illegally reselling rights **not agreed to** by the original owners' families.

There is a growing trend in the industry to offer "green burials," in which the interment is not designed to preserve the body for as long as possible, but in fact to allow the decomposition to occur naturally and, in fact, much more quickly. As one cemetery's puts it: "Green Burial is the natural remedy to assist and facilitate the return of the deceased back into the Earth without the need for embalming. The use of a casket, and/or embalming are not required by law, nor are they a requirement of the cemetery when direct Green Burial is your choice."

In green burials, the body is buried either in a simple shroud, or sometimes in a basket-style container, to facilitate natural decomposition. People who choose green burials are often acting upon their perception of embalming chemicals as unnatural, and they like the idea of their loved one returning to the earth and becoming part of the natural order without burial containers to inhibit that process.

Often green burials are also offered with limited rights, and often memorials are simply names carved into an on-site boulder or into small natural stones. Green burials can be more expensive than traditional interments, depending on the cemetery's handling of the green burial area.

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Mausoleums are structures which hold caskets or similar containers, and they can be constructed either above ground or below ground. If they are constructed below ground, they are usually referred to as lawn crypts. In a mausoleum, bodies are of course closely stacked. A columbarium is similar, but because it is designed to hold cremated remains rather than full bodies, a columbarium can accommodate many more cremated remains. Prices for interment in a mausoleum or columbarium vary widely, but typically correspond to or exceed those for ground burial.

## **Multiple Depth and Alternative Interments**

Multiple depth interments are sometimes chosen by families who want to be laid to rest together. Sometimes, however, these multiple depth interments are part of the creation of a landscaped hill, or they occur in conjunction with in-line or row interments.

Multiple depth interments are a long-standing and widespread practice that can be traced to the earliest known graves. The practices alleged to have occurred at Burr Oak violated many laws (see Section V. B), but the mere fact that some remains were buried in proximity to each other, or in the same vertical plane, is not evidence of any wrong-doing. It is not the case that a multiple depth interment offers the right to remove remains. Multiple depth interments are very different from “mass graves,” which contain multiple bodies indiscriminately buried without regard for the identity or location of the remains.

In a multiple depth interment, the loved one is afforded a dignified and respectful interment and a resting place in a specific location of which the cemetery will keep a record.

Single or multiple depth row interments are dug one after the other: in a row. In this kind of arrangement, the cemetery retains the right to perform additional interments on top of the earlier graves after a certain period of time: anywhere from immediately to after 50 years. In some cases concrete burial containers are lined up in rows one directly atop another and in other cases burial containers are covered with dirt and another layer is added at a later date, or the concrete box of the next interment is stacked upon top of the last interment. This practice sometimes results in the creation of a landscaped hill as additional levels of interment occur. In all instances, the original remains stay in place, and memorials (if purchased) are also kept at the site. Records of the location of the remains are of course maintained by the cemetery. Even Burr Oak kept these records for some interments, but it appears that some records were destroyed in direct violation of cemetery law.

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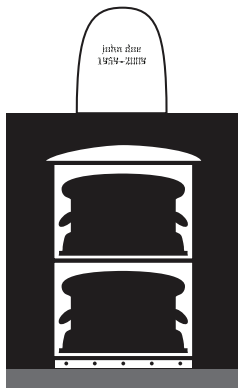
**In a multiple depth burial, the loved one is afforded a dignified and respectful interment and a resting place in a specific location of which the cemetery will keep a record.**

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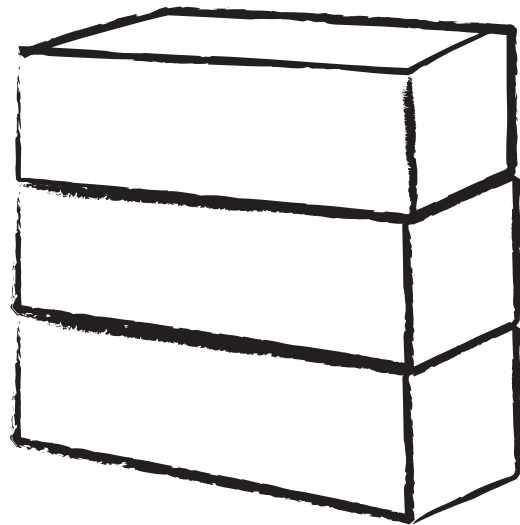
Interments of these sorts are often available for much less than a classic interment right: often for as little as \$550–750, less than cremation with the purchase of an urn. These arrangements are provided at the request of the families (or at the direction of the county, in the case of some indigent or unclaimed remains) and with their complete knowledge and consent.

Multiple depth interments have long been a widespread and legal practice in Illinois. In Southern Illinois there is a cemetery that performs multiple depth interments five deep and in tandem. The same cemetery has also done multiple depth welfare interments.

The following depicts lawn crypts for double or triple casket interments, and shows how burial containers are sometimes stacked:



**Multiple depth burials:  
Double and triple depth**



**Concrete burial boxes  
stacked one atop another**

Multiple depth interments are actually sufficiently common at many cemeteries that a standard form is often employed to ensure that families understand that they are agreeing that the remains of another person will be buried on top of their loved one after a given period of time. (A sample of this form is attached as part of the recommended legislation in Section VI.) Some forms of multiple depth interments are a long-standing response to demand in the marketplace for a low-cost interment other than cremation. Many families with limited resources, such those for whom Public Aid will pay for the interment, seek precisely this option.

“Row interment” is a generic term rather than an industry term of art, but it refers to the practice of burying one burial container right next to another. Loved ones are still interred in specific locations, where they will remain and where the cemetery will maintain a record of their location. Operationally, instead of opening each individual grave, a long row will be opened and closed as interments are performed. This is often the arrangement a county contracts for. Some row interments may only opened one at a time.

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It may be that some have reacted to the concept of multiple depth interments based on their unfamiliarity with the concept, in the same way that some may believe that a “real” home is a single-family house with a white picket fence, as opposed to a rental apartment building where families are stacked one atop the other. But both kinds of arrangements are widespread in response to very real market demands, and both confer legal rights for those who choose them.

### III D

## **Low Cost Arrangements and the Public Sector**

Many of the low cost interment options in Illinois are related to the need to accommodate interments for families of limited resources and interments funded by the public sector. For example, Public Aid provides a interment subsidy of \$552, and Cook County provides for the interment of a many who are unclaimed or without family or otherwise without means; currently the price paid by the County for such a interment is approximately \$350.

These amounts are clearly not sufficient for a classic interment right, which often costs \$2,500 on the low end. For this reason, and because many families often seek low-cost alternatives to cremation, multiple depth and alternative interments are not uncommon. These arrangements accommodate those for whom this level of payment must cover the cost of interment, or those who either desire a low cost option or are unable to afford a higher cost option. These practices can be found at a number of cemeteries, and these arrangements are chosen knowingly by many families for many different reasons.

Public Aid interments (also known as welfare interments) are based upon a interment allowance paid by the State of Illinois. This allowance can be used at participating cemeteries for the purchase of an interment right and for the opening and closing of the grave. Since the amount of the reimbursement is not large (currently \$552), many cemeteries are not willing to provide interment rights for that purpose.

This allowance is only available to persons who died while on public aid. Sadly, many people without means are not on Public Aid, and they are of course not eligible to enroll once they are deceased. In these cases, and in the cases of unclaimed remains, Cook County will pay directly for an interment. Cemeteries bid for the contract to perform the interments; currently the price for such a interment is approximately \$350.

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Many families with limited resources, such those for whom Public Aid will pay for the burial, seek precisely this option. Only minimal arrangements can be provided for these minimal prices.

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Only minimal arrangements can be provided for these minimal prices. In Cook County, the cemetery is responsible for collecting the remains. Bodies often arrive in plywood boxes without caskets. When the remains arrive at the cemetery, the boxes are placed in rows to minimize expenses by saving time and labor. Once a row is complete, it is covered with soil. At that point, another row can be placed in the space above, giving a resting place to those loved ones where their families can visit them.

## Cemetery Operations

Cemetery operations should include maintenance, interments and clerical functions such as recordkeeping and management of funds.

Maintenance at a cemetery includes a broad range of functions. It certainly includes landscaping such as mowing the grass and care of trees. But maintenance should also include keeping roads in good repair, and ensuring good drainage on the site, as well as maintaining fences and structures (such as the office and maintenance sheds).

Interment often involves the use of heavy machinery such as tractors and pickup trucks as well as backhoes and bobcats which are used to open and close graves and to move heavy memorials. Operations have to take place in all seasons and in all kinds of weather. These activities represent significant expenses to a cemetery, and many low-cost interment options may barely cover the direct costs of a interment, leaving little if anything for the ongoing maintenance of the grounds.

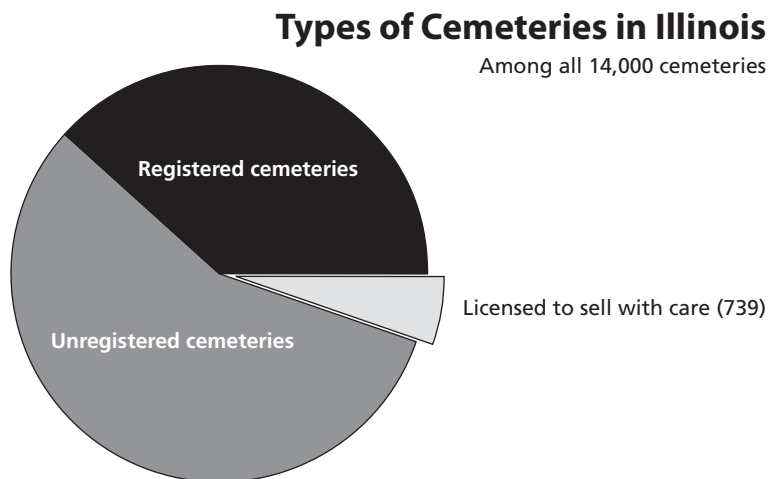
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**Maintenance activities represent significant expenses to a cemetery, and many low-cost interment options may barely cover the direct costs of a burial.**

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The office work associated with an active cemetery is by no means insignificant. Staff not only have to be skilled dealing with grieving families, but they have to maintain records for decades if not centuries. If there is a care fund, staff has to ensure that those funds are properly managed. Many entrust their funds to an ICFHA master trust.

It must be restated that most of the 14,000 cemeteries in Illinois do not have income or resources to engage in an ideal level of maintenance.



Source: ICFHA analysis of Comptroller's information

## **Recordkeeping**

Cemeteries are much more than a resting place for the remains of loved ones: they are a repository of information about families. For cemeteries, ongoing care includes care of the records involved with each loved one.

According to the Illinois Cemetery Care Act, care cemeteries are responsible for maintaining the following information: name of the interred party, date of interment, date of death (if available) and of course the location of the remains. This level of information is largely standard across the industry, and accounts for the widespread use of cemetery databases by genealogical researchers.

Cemeteries are also required to have a map detailing the location of all the remains resting on the premises. These maps are large, table-sized documents. Although there is software which could make digital versions of these maps, that software is prohibitively expensive.

Many larger and more active cemeteries have computerized a large portion of their records, and many maintain off-site back-up copies of their records. But many smaller cemeteries do not have the wherewithal to computerize decades of information, and many smaller and less active cemeteries do not have the clerical capacity to create and maintain off-site copies of their records.

For pre-need purchases, the cemetery is responsible for maintaining the location and the family is responsible for keeping a copy of the deed. Unfortunately, it is not unusual for cemeteries to encounter complicated situations where, years later, it is necessary to clarify a family relationship and putative claim to a pre-need purchase. Deeds of sale are as specific as deeds of sale for other real property, and ownership is not casually transferred.

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Smaller cemeteries do not have the wherewithal to computerize decades of information, and many smaller and less active cemeteries do not have the clerical capacity to create and maintain off-site copies of their records.

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## **Specific Operational Issues**

Some of the issues that have been discussed in regards to Burr Oak may relate to occurrences that are relatively routine and totally innocent.

For example, discarded headstones and memorials were found at Burr Oak. This is not necessarily a sign of any inappropriate behavior. Headstones are from time to time removed for innocent and appropriate reasons. They are sometimes removed in order to perform interments at adjacent sites or to perform certain maintenance tasks; in these cases they are replaced as soon as practical. It also happens that headstones and memorials are sometimes removed because of mistakes in lettering (such as misspellings), because they are damaged in normal maintenance activities, because they are broken in shipping or in cases when the consumer did not finish paying for them. In these cases, the discarded markers will likely end up behind a maintenance shed or in some other unceremonious location: but those markers are, at that point, no more than stones.

The issues related to the discovery of bones are more complex. Several factors may lead to the discovery of human bones at a cemetery, any of which would be absolutely routine and innocent. Cemeteries deal in very long timespans: generations and centuries. Over that length of time, soil is fluid. Rains, tree trunks, the vibrations from nearby roadways and other factors can cause different levels of earth to move, and to move unevenly.

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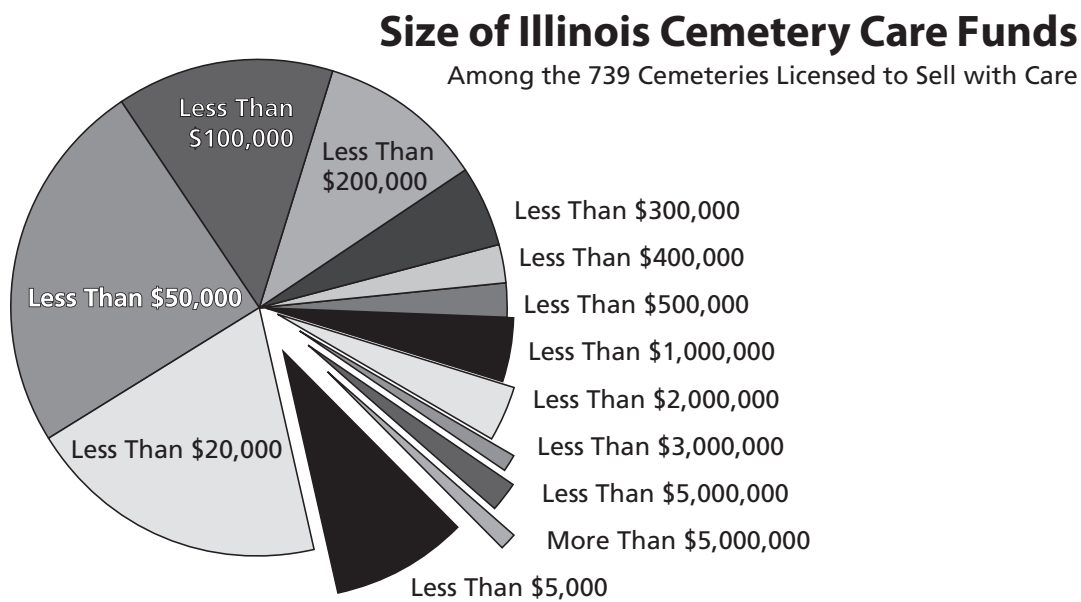
**Some of the issues that have been discussed in regards to Burr Oak may relate to occurrences that are relatively routine and totally innocent.**

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In older interments, remains may have been interred in simple pine coffins or wooden caskets, and sometimes only shrouds. These of course decompose much more quickly than bones. When this happens, the remains are not only subject to moving with the soil, and it is not infrequent for those bones to rise to the surface or sometimes to be disturbed by wild animals. When bones are found at a cemetery, they are reinterred.

## Operations and Economics

The cost of maintenance routinely exceeds revenues from care funds at most cemeteries. This is an important point: most cemeteries spend more than they earn from care funds. Municipal and federal cemeteries can make up the shortfall needed to cover maintenance expenses through taxes. Religious cemeteries and fraternal cemeteries can sometimes cover the shortfall through donations as long as those organizations remain active and committed to the support of those cemeteries. Care fund cemeteries have funds invested which provide some income to apply against the costs of maintenance; these care funds are regulated by the Illinois Cemetery Care Act.



Source: ICFHA analysis of Comptroller's information

Many cemeteries perform very few interments each year. Hundreds of cemeteries perform fewer than one every other month, and hundreds more perform only one or two a month. Furthermore, care fund cemeteries constitute a small percentage of all cemeteries: out of the approximately 14,000 cemeteries in Illinois, there are only 739 care cemeteries.

## **Reasonable Levels of Maintenance**

Standards of maintenance are not easily defined. One idea that has been mentioned is to require some level of healthy grass on a grave. This is a concept more easily desired than achieved. It can take up to a year in normal conditions for grass to take hold, and some years are too dry even for existing grass. In some cemeteries, families are responsible for the sod on their loved ones' graves, and in others the terms are different. By late winter and early spring, any landscape looks bleak, and cemeteries have a particular challenge because of the traffic and work that has occurred on its grounds.

Some cemeteries are located in jurisdictions which impose standards of maintenance on all businesses, but some are in unincorporated areas or in jurisdictions without explicit requirements. This is one reason that maintenance levels at cemeteries vary. But maintenance levels also vary according to the level of care supported by the income of a cemetery. Some cemeteries are municipally owned, and as such can define their own standards for maintenance. Some cemeteries are religious, in which case there are issues regarding the extent to which the state can regulate the affairs of a church or religious operation.

Some cemeteries offer exceptional landscaping and extended attention to graves and facilities; these cemeteries usually charge a premium for this level of activity. The range of maintenance is currently wide, just as the market is broad. To a large degree, maintenance standards are a function of market dynamics in the same way that golf courses or hotels vary.

Defining a single threshold standard would probably have little impact on some cemeteries, but on other cemeteries the impact could be significant. Some cemeteries which perform very few interments, or which have small care funds, might not be able to handle standards which entailed increased maintenance expense. They might become insolvent, creating a difficult situation either for the State or for some other public body with jurisdiction.

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**Defining a single threshold standard would probably have little impact on some cemeteries, but on other cemeteries the impact could be significant.**

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Others might need to raise prices, with the result that interment options might be greatly limited for those families with lesser resources. It is conceivable that there might be an impact on the availability of public aid interments or of interments in that price range.

V A.

## **The Events at Burr Oak : What Is Currently Alleged**

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The following is a scenario of understanding of what is alleged to have transpired at Burr Oak, based on media coverage and conversations with those in the industry.

The Cook County Sheriff's Office was contacted by Perpetua, Inc. (the owner of Burr Oak), about monetary theft.

The Sheriff's office started an investigation immediately. During the investigation they uncovered a scheme to resell interment rights. This scheme involved smashing concrete burial boxes containing human remains deeper into the ground and placing a new casket on top of the smashed burial container. At that point, a new interment would be sold for cash, and the transaction would never be recorded.

In addition, the perpetrators allegedly dug some graves deeper than necessary in a person's titled interment right during the rightful owner's interment. Afterwards, a new box could be buried on top of the first burial container, in the same location, with an unauthorized — or more accurately, a fraudulently authorized — stranger in the top berth.

It also seems that, in some instances, human remains may have been disinterred and discarded in a dumping grounds, along with headstones.

Finally, pictures of a proposed mausoleum museum were shown to people in order to solicit contributions and to sell pre-need rights. The perpetrators collected these contributions and pre-need funds and kept them, rather than depositing them into a pre-need fund as legally required.

All of these actions are already illegal and fully banned by existing laws.

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**All of these actions are  
already illegal and fully  
banned by existing laws.**

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1. Under no circumstances is it legal to intentionally disturb human remains by smashing them deeper into the ground in order to resell an interment right. This constitutes dismembering human remains, and violates the Cemetery Protection Act.
2. Under no circumstances is it legal to take an interment right that was deeded to one individual and reuse it for another person's interment without the consent of the owner and the cemetery. Doing so would constitute a violation of the Consumer Fraud and Deceptive Practices Act and the Criminal Code of theft by deception.

3. Under no circumstances is it legal to intentionally dig up human remains and throw them into a pile in order to reuse the interment right. This constitutes dismembering human remains and violates the Cemetery Protection Act.
4. Under no circumstances is it legal to sell pre-need crypts to any person without depositing the required amounts into a licensed trust fund, audited by the State of Illinois. This would be a violation of the Pre-Need Cemetery Sales Act.
5. Under no circumstances can funds earned from the Cemetery's Care Fund be used for purposes other than care of the cemetery. In addition funds, from the sale of new interment rights must in all cases be deposited into the Cemetery's Care Fund. It was alleged that during 2007 no deposits were made into the Care Fund. These acts would constitute a violation of the Illinois Cemetery Care Act.
6. Under no circumstances is it permitted to remove and discard memorial headstones without cause or without the consent of the right holders. To do so would constitute a violation of the Cemetery Protection Act.

It is true that sometimes headstones are removed for innocent and appropriate reasons. They are sometimes removed in order to perform interments at adjacent sites or to perform certain maintenance tasks; in these cases they will be replaced as soon as practical. It also happens that headstones and memorials are sometimes removed because of mistakes in lettering (such as misspellings); because they are broken in shipping; or in cases when the consumer did not finish paying for them.

There are other practices which occurred at Burr Oak which, like the removal of headstones, may occasionally occur at law-abiding cemeteries for innocent and appropriate reasons.

For example, multiple depth interments have been performed at many cemeteries for many years. Today, some cemeteries and some modern funeral directors require that the families make specific interment arrangements on site, at the cemetery, for these types of arrangements.

By virtue of the overt fraud and flagrant disregard for the sanctity of the remains, the incidents at Burr Oak bear only an accidental relationship to legal multiple depth interments. The actions at Burr Oak constitute clear violations of existing laws. Even at Burr Oak, though, lawful multiple depth interments may have been performed before the current management undertook their course of criminal activities. During the 1990s, at a time when different owners managed the cemetery, it was known in the industry that Burr Oak performed multiple depth and public aid interments.

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## **Existing Laws That Applied to the Burr Oak Situation**

There are five main statutes that can impose criminal penalties on persons that violate the law in the ways that are said to have occurred at Burr Oak:

- (a) the Illinois Cemetery Protection Act (765 ILCS 835, et. seq.) imposes criminal felony penalties and fines for persons that willfully damage, destroy or desecrate human burial remains and markers without proper legal authority;
- (b) the Illinois Cemetery Care Act (760 ILCS 100, et. seq.) and the Illinois Pre-Need Cemetery Sales Act (815 ILCS 390, et. seq.) impose criminal felony penalties and fines for persons that steal monetary deposits to be used for cemetery maintenance purposes and for the preneed sale of cemetery merchandises and services;
- (c) Article 16 of the Illinois Criminal Code imposes criminal felony penalties and fines for various types of property theft that may be applicable;
- (d) the Pre-need Cemetery Sales Act (815 ILCS 390, et. seq.) imposes criminal felony penalties and fines for persons that steal monetary deposits to be used for cemetery maintenance purposes and for the pre-need sale of cemetery merchandises and services; and
- (e) the Consumer Fraud and Deceptive Businesses Act (815 ILCS 505, et. seq.) may also be applicable regarding deceptive business practices.

### **1. Illinois Cemetery Protection Act (765 ILCS 835, et. seq.)**

Section 1 of the Cemetery Protection Act specifically provides that:

“(a) Any person who acts without proper legal authority and who willfully and knowingly destroys or damages the remains of a deceased human being or desecrates human remain is guilty of a Class 3 felony.”

“(a-5) Any person who acts without proper legal authority and who willfully and knowingly removes any portion of the remains of a deceased human being from a burial ground where skeletal remains are buried or from a grave, crypt, vault, mausoleum, or other repository of human remains is guilty of a Class 4 felony.”

“(b-5) Any person who acts without proper legal authority and who willfully and knowingly defaces, vandalizes, injures, or remove a gravestone or other memorial, monument of marker commemorating a deceased person or group of persons, whether located within or outside of a recognized cemetery, memorial park or battlefield is guilty of a Class 4 felony for damaging more than 1 and not more than 4 gravestones; a Class 3 felony for damaging more than 5 and not more than 10 gravestones; a Class 2 felony for damaging more than 10 gravestones and shall provide restitution to the cemetery authority or property owner for the amount of the damage caused.”

## **2. Illinois Cemetery Care Act (760 ILCS 100, et. seq.)**

The Burr Oak employees allegedly resold cemetery spaces in an undeveloped mausoleum without making the deposits required by the Act failed to maintain the required records.

Section 2a of the Cemetery Care Act provides for the record keeping requirements of deposits by cemetery authorities and the information that has to be provided to the public.

Section 4 of the Cemetery Care Act provides the deposit requirements for the designated amounts received for care from purchasers in connection with sales on an at need or preneed of cemetery spaces, crypts and niches.

The failure to provide this information or make the required deposits is a violation of the Act and could lead to Felony 4 and other penalties and fines. Section 24 of the Act specifically states the following:

“Whoever intentionally fails to deposit the required amounts into a trust provided for in this Act, intentionally and improperly withdraws or uses trust funds for his or her own benefit, or otherwise intentionally violates any provision of this Act (other than the provisions of Section 23 and subsections (b), (c), (d), and (e) of Section 2a) shall be guilty of a Class 4 felony, and each day such provisions are violated shall constitute a separate offense.”

“If any person intentionally violates this Act or fails or refuses to comply with any order of the Comptroller or any part of an order that has become final to such person and is still in effect, the Comptroller may, after notice and hearing at which it is determined that a violation of this Act or such order has been committed, further order that such person shall forfeit and pay to the State of Illinois a sum not to exceed \$5,000 for each violation. Such liability shall be enforced in an action brought in any court of competent jurisdiction by the Comptroller in the name of the People of the State of Illinois.”

“In addition to the other penalties and remedies provided in this Act, the Comptroller may bring a civil action in the county of residence of the licensee or any person accepting care funds to enjoin any violation or threatened violation of this Act.”

“The powers vested in the Comptroller by this Section are additional to any and all other powers and remedies vested in the Comptroller by law.”

## **3. Illinois Pre-Need Cemetery Sales Act (815 ILCS 390, et. seq.)**

The Burr Oak employees allegedly sold crypts in undeveloped mausoleum (Emmet Till Mausoleum) without making the deposits required by the Act.

Section 23 of this Act specifically states the following:

“(a) Any person who fails to deposit the required amount into a trust provided for in this Act, improperly withdraws or uses trust funds for his or her own benefit, or otherwise violates any provision of this Act is guilty of a Class 4 felony.”

#### **4. Illinois Criminal Code (720 ILCS 5, et. seq.)**

The Burr Oak employees allegedly took the grave spaces belonging to others and resold them, as well as taking money from their employer.

The following portions of Article 16 of the Illinois Criminal Code (Theft and Related Offenses) may apply:

“Sec. 16-1. Theft.

(a) A person commits theft when he knowingly:

- (1) Obtains or exerts unauthorized control over property of the owner; or
- (2) Obtains by deception control over property of the owner; or
- (3) Obtains or exerts control over property in the custody of any law enforcement agency which is explicitly represented to him by any law enforcement officer or any individual acting in behalf of a law enforcement agency as being stolen, and
- (b) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or
- (c) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

(b) Sentence:

- (5) Theft of property exceeding \$10,000 and not exceeding \$100,000 in value is a Class 2 felony.
- (6) Theft of property exceeding \$100,000 and not exceeding \$500,000 in value is a Class 1 felony.
- (6.2) Theft of property exceeding \$500,000 in value is a Class 1 non-probationable felony.”
- (7) Theft by deception, as described by paragraph (2) of subsection (a) of this Section, in which the offender obtained money or property valued at \$5,000 or more from a victim 60 years of age or older is a Class 2 felony.”

#### **E. CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT (815 ILCS 505, et. seq.)**

The Burr Oak employees allegedly sold grave spaces without disclosing to the purchasers that the grave spaces had been used before or that a second casket and human remains were under the new interment. This is in addition to the specific laws violated above and reference in this Act as also being covered by this Act.

Section 2 of the Act specifically states:

“Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful wheth-

er any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act.”

In addition, Section 2Z of the Act states (emphasis added):

“Any person who knowingly violates the Automotive Repair Act, the Automotive Collision Repair Act, the Home Repair and Remodeling Act, the Dance Studio Act, the Physical Fitness Services Act, the Hearing Instrument Consumer Protection Act, the Illinois Union Label Act, the Job Referral and Job Listing Services Consumer Protection Act, the Travel Promotion Consumer Protection Act, the Credit Services Organizations Act, the Automatic Telephone Dialers Act, the Pay-Per-Call Services Consumer Protection Act, the Telephone Solicitations Act, the Illinois Funeral or Burial Funds Act, **the Cemetery Care Act**, the Safe and Hygienic Bed Act, **the Pre-Need Cemetery Sales Act**, the High Risk Home Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax Act, the Payday Loan Reform Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the Internet Caller Identification Act, paragraph (6) of subsection (k) of Section 6-305 of the Illinois Vehicle Code, Section 18d-115, 18d-120, 18d-125, 18d -135, or 18d-150 of the Illinois Vehicle Code, Article 3 of the Residential Real Property Disclosure Act, the Automatic Contract Renewal Act, or the Personal Information Protection Act **commits an unlawful practice within the meaning of this Act.**”

## **How could this have been prevented?**

Sadly, heinous crimes can never be wholly eradicated or legislated out of existence. If the allegations are true, these individuals not only engaged in a highly intentional conspiracy to violate forthright laws, but they violated some of the most basic human impulses with respect to the dignity of the dead.

Nevertheless, some recommendations to make things better for the consumer might include:

**1. Stiffer penalties.** For example, penalties could be increased in Section 1 of the Cemetery Protection Act (765 ILCS 835/1) where the language already specifically applies to the alleged acts. In addition, a new subsection (b-8) could be added to Section 1 to read as follows:

(b-8) Any person who acts without proper legal authority and who willfully and knowingly removes human or cremated remains from a grave, crypt or niche with the intent of reselling the grave, crypt or niche is guilty of a Class X felony.

**2. Restitution through crime victims laws.** There are a number of provisions already in place that could assist victims of such crimes to seek restitution; these provisions already extend to several of the criminal activities alleged to have occurred at Burr Oak. They could be strengthened and extended to cover some of the additional crimes involved.

**3. Stricter provisions governing contracting for cemetery services and merchandise.** Families should be required to make their own arrangements, directly with the cemetery (preferably with an on-site visit). At need contracts should have certain disclosures in connection with sale of interments. Funeral Directors should be barred from referring families to particular cemeteries (a list of several alternatives is acceptable).

**4. Improved recordkeeping.** Records and the interment permit should contain location information, and this information should be filed with vital records offices, as was done before 1995.

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1. Stiffer penalties.
  2. Restitution through crime victims laws.
  3. Stricter provisions governing contracting for cemetery services and merchandise.
  4. Improved recordkeeping.
-

## **RECOMMENDED LEGISLATION**

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The Illinois Cemetery and Funeral Home Association (“ICFHA”) believes that the laws applicable to cemeteries are already extensive. The penalties that will be imposed on the four defendants arrested in connection with their activities at Burr Oak Cemetery, if they are found guilty will, under the present laws, be significant. The memo that ICFHA provided to the task force concerning the possible laws that were violated seems to be the basis for the indictment recently issued by the grand jury. A copy of that memo is included as Section V. B.

ICFHA also believes that the alleged acts of these employees were criminal acts and did not relate to acceptable cemetery practices and procedure. It is impossible to prevent crimes by legislation. A more attainable goal is to make sure that criminals are properly punished when caught and tried.

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The ICFHA and its General Counsel have now had the opportunity to consider some possible modifications to the present laws that might be beneficial to consumers and feasible from the perspective of industry practices and resources. The following suggestions have now been considered by the ICFHA board and are responsive to the request of the Task Force, at the first hearing, for ICFHA’s recommendations.

### **Increased penalties to specifically apply to the alleged acts.**

First, ICFHA agrees with the proposal to increase the penalties in the Section 1 of the Cemetery Protection Act (765 ILCS 835/1) that specifically applies to the alleged acts. In addition, ICFHA believes that a new subsection (b-8) should be added to Section 1 to read as follows:

(b-8) Any person who acts without proper legal authority and who willfully and knowingly removes human or cremated remains from a grave, crypt or niche with the intent of reselling the grave, crypt or niche is guilty of a Class X felony.

### **Increased disclosure in contracts.**

Second, Section 14 of the Illinois Cemetery Pre-need Sales Act (815 ILCS 390/14) already contains extensive requirements for pre-need contracts including the requirement to disclose in writing certain basis information to consumers. There is no similar requirement covering at need cemetery interment right purchases. Accordingly, ICFHA recommends that the following be added as a new section to the Cemetery Protection Act:

It shall be unlawful for any person doing business within this State to accept sales proceeds, either directly or indirectly, by any means unless the seller enters into an at need cemetery sales contract which meets the following requirements:

**Items to be disclosed in contracts.**

(1) A written sales contract shall be executed in at least 11-point type in duplicate for each at need sale made by any cemetery and a signed copy given to the purchaser. Each completed contract shall be numbered and dated and shall contain: (i) the name and address of the purchaser, the principal office of and type of cemetery; (ii) the name of the person who is to receive the cemetery merchandise, cemetery services or the interment, entombment or inurnment spaces under the contract; (iii) specific identification of the cemetery merchandise, cemetery services or the interment, entombment or inurnment spaces purchase; (iv) the type and duration of interment, entombment or inurnment spaces purchase; (v) the price of the cemetery merchandise, cemetery services or the interment, entombment or inurnment spaces purchased; (vi) whether the cemetery is a Care or Non-Care cemetery; (vii) if it is a care cemetery the Care to Be Provided should be disclosed; (viii) that the purchase is subject to the rules and regulations of the cemetery and the availability of those rules for review;

**Rules, prices and rights to be available for inspection.**

(2) All cemeteries shall make available for inspection, and upon reasonable request, provide a copy of its rules and regulations, its current prices for cemetery merchandise and services, interment, entombment and niches rights.

**Maps to be available for inspection.**

(3) A cemetery may, from time to time as land in its cemetery may be required for interment purposes, survey and subdivide those lands and make and file in its office a map thereof delineating the lots or plots, avenues, paths, alleys, and walks and their respective designations. The cemetery shall open the map to public inspection. The cemetery may make available a copy of the overall map upon written request and payment of reasonable photocopy fees. Any unsold lots, plots or parts thereof, in which there are no human remains, may be resurveyed and altered in shape or size, and properly designated on such map. Nothing contained in this subsection, however, shall prevent the cemetery from enlarging an interment right by selling to the owner thereof the excess space next to such interment right and permitting interments therein, provided reasonable access to such interment right and to adjoining interment rights is not thereby eliminated.

**Records to be maintained.**

(4) A cemetery shall keep a record of every interment, entombment, and inurnment in the cemetery. The record shall include the deceased's name, age, and date of interment, when these particulars can be conveniently obtained, and the lot, plot, or section where the human remains are interred, entombed, or inurned. The record shall be open to public inspection consistent with State and federal law. The cemetery authority shall make available, consistent with State and federal law, a true copy of the record upon written request and payment of reasonable copy costs.

**Access to cemetery to be provided.**

(5) A cemetery shall provide access to the cemetery under the cemetery's reasonable rules and regulations.

**Personal visit recommended for contract.**

(6) Any and all consumer literature shall make it clear that families should personally visit the cemetery prior to finalizing contractual arrangements for interment.

**Untitled interment rights clarified.**

(7) Untitled multi-interment rights can only be purchased for welfare and public aid interments or when purchasers confirm in writing that they understand and accept this arrangement. In no case can the remains be removed without the direct authorization of the family or their agent. If human remains that were not interred in a casket and/or burial container resurface due to natural conditions, they may be reinterred by the cemetery at the same location without the requirement for a disinterment or new interment permit.

**Licensing of cemeteries.**

(8) The Department of Financial and Professional Regulation must license every cemetery that engages in the sale of more than 25 at need contracts. Every cemetery sales person for a licensed At Need Cemetery must register with the DFPR and provide an affidavit that they will give every cemetery interment right purchaser a copy of the At Need Agreement and will provide the disclosures and explanations required by this Law. The penalty for violating these requirement shall be a felony 4 and a fine on the cemetery of \$500 per violation.

**Database of information shall be maintained and available.**

(9) Every county shall maintain a cemetery interment use a searchable database as part of the Electronic Death Certificate System searchable by the name of the deceased and by cemetery. This database shall be accessible by cemetery owners and operators in the same manner as the database used by the funeral directors for the recording of interment locations. Access to this database by members of the public shall be limited in the same manner as access to death certificates is presently limited.

**Effective date.**

(10) These requirements shall only apply to new At Need sales entered into after the effective date of the law.

Explanation: A Deed or Certificate of Ownership for interment rights is for entombment, interment and inurnment rights which are easements listed as personal property. Ownership rights change through heirship, selling, or exchanging said rights. The recording of this documentation in the cemetery records is the responsibility of the cemetery in the cemetery records. The cost to record any documents at a county level is cost prohibitive. A Cemetery has the job of keeping records. Families who owned interment rights at Burr Oak should have received a Deed or Certificate of Ownership reflecting this information. The Pre Need Sales Act already requires contracts and disclosures and this proposal will provide for the same rights for at need purchasers.

**Sample At Need Contract Form**

(11) ICFHA feels that it will be helpful to smaller cemeteries if the law contains a form contract that they can use. The following form has been prepared to comply with the proposed law.

**ABC CEMETERY COMPANY**  
(Address & Phone Numbers)

**CONTRACT FOR AT NEED CEMETERY PROPERTY MERCHANDISE AND SERVICES**

Date: \_\_\_\_\_

Contract No: \_\_\_\_\_

This At Need Cemetery Contract is enter into this \_\_\_\_\_ day of \_\_\_\_\_ of 20 \_\_\_\_ by and between the ABC Cemetery Company, an Illinois corporation, as Seller and \_\_\_\_\_; as Purchasers for the benefit of \_\_\_\_\_ decedent).

Seller hereby agrees to sell and Purchasers hereby agree to purchase the following cemetery property, merchandise and services:

Item	Price
1. Space _____ in Lot _____ Section at ABC Cemetery	\$ _____
2. Crypt _____ in Mausoleum at ABC Cemetery	\$ _____
3. Niche _____ in Mausoleum at ABC Cemetery	\$ _____
4. Grave Box or Burial Container; _____	\$ _____
5. Interment Services (Opening & Closing); _____	\$ _____
6. Memorial or Headstone; _____	\$ _____
7. Care Fund Deposit (if applicable) _____	\$ _____
<b>8. TOTAL PRICE</b>	<b>\$ _____</b>

The Cemetery Property, Merchandise and Services are being sold in accordance with the following terms and conditions:

\_\_\_\_\_ (a) The Interment Space, Entombment Crypt or Niche is a permanent place for the disposition of the decedent's remains and ABC Cemetery will be issuing a Deed or Certificate of Ownership to evidence the Purchasers ownership in these rights of interment.

Purchaser Initials \_\_\_\_\_

\_\_\_\_\_ (b) Alternatively, the Interment Space is located in a multi-interment area and is not a permanent place for the disposition of the decedent's remains. Purchasers understand and hereby confirm that at the end of the twenty (20) year term of use the remains of another person will be buried above the decedent(s).

Purchaser Initials \_\_\_\_\_

\_\_\_\_\_ (c) ABC Cemetery is a care cemetery licensed under the Cemetery Care Act. General Care for the cemetery will be provided from the net income of the endowed care fund as provided in the Care Act.

Purchaser Initials \_\_\_\_\_

\_\_\_\_\_ (d) The Interment Space, Entombment Crypt or Niche purchased herein is subject to the Rules and Regulations of the ABC Cemetery as they presently are in effect and as the Board of Directors of the ABC Cemetery may amend them from time to time. A current copy of the Rules and Regulations is kept at the cemetery office and may be reviewed during normal business hours. Copies of parts or all of the Rules and Regulations may be obtain after the payment of a reasonable copying costs.

Purchaser Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal this the day and year first above written.

Purchasers: \_\_\_\_\_

\_\_\_\_\_  
(address – City State Zip)

\_\_\_\_\_  
(phone number)

Accepted by ABC Cemetery: \_\_\_\_\_

ICFHA believes that the above provision will provide the information to consumers about the cemetery property, merchandise and services that are purchased on an At Need basis. These requirements also can easily be complied with by all of the cemeteries in the state. ICFHA also believes that it is not a good idea to require cemetery salespersons to be licensed since they do not engage in the same types of activities, nor do they require the same type of training as the various endeavors that are presently licensed in the State of Illinois.

VII.

## Addenda

A.

## Hart Island

### The Morning News

BLACK AND WHITE AND READ ALL OVER

New York City is a collection of islands, and one, Hart Island, is completely inaccessible, possibly because it's reserved for the dead.

The best way to get a glimpse of Hart Island—about the only way, in fact—is to travel to City Island, a long, thin spit of land just off the Bronx shore, at the western edge of Long Island Sound. Stand on the northeastern shore, and you can't miss it: Hart Island is long and thin, like its neighbor, only about a third as large. But while City Island is heavily populated, Hart Island is off limits. And though City Island is best known for its late Victorian-era houses, Hart Island is best known for the giant cross-embazoned memorial planted near its northern end.

Most people never think about it, but New York is an archipelago; outside of the Bronx, the city's 8 million people live on a collection of 50 islands. There are the big islands—Manhattan, Long, and Staten—as well as a number of medium-sized ones—Ward, City, Governor's, Roosevelt. There are small islands, like Ellis and Liberty, well-known and heavily toured.

A majority of the city's islands, however, are inaccessible to the public—which is unfortunate, because in many cases they are also the most interesting. There's U Thant Island, just below Roosevelt, originally called Belmont Island but changed after followers of the guru Sri Chinmoy landed there and built a memorial to the former U.N. secretary general (himself a close friend of Chinmoy). There's North Brother Island, which sits between the Bronx and Riker's Island and for 26 years was the home of 'Typhoid Mary' Mallon.

But where most New York islets are lucky to have one claim to fame, Hart Island has several: It has been, at times, a prisoner of war camp, a sanitarium, a missile base, and the city's potter's field. In fact, though its other uses have come and gone, it's this

last function that has remained a constant: since the 1869 burial of Louisa Van Slyke, 24, almost 800,000 bodies (most unidentified) have been interred there, stacked three deep across a wide open swatch of land in the center of the island.

The burials are performed by prisoners, bused from Riker's Island and then ferried aboard the 'Michael Cosgrove'; they are paid 25 cents an hour and they refer to themselves as the 'death patrol' and 'potter's navy.' It was a group of inmates who appealed to the Board of Corrections in the mid-1940s to build a memorial to the forgotten dead, and in 1948 a 30-foot tower went up on the north side of the field. One side bears a cross, another the word 'peace.'

While the island is uninhabited today, for most of its history it was home to a variety of penal facilities. Toward the end of the Civil War it held Confederate soldiers; at the turn of the century it was, alternately, an old men's home, a tuberculosis hospital, and a reform school for juvenile delinquents. During World War II the navy built a disciplinary barracks there, and after a German U-Boat was captured nearby, the island held the sub's crew.

Today the buildings that housed the prisoners—and the generations of support staff—are abandoned, adding yet another level of desolation to the 'island of the dead.' Michael Harling, who visited Hart Island a few years ago, said 'it was eerie and a bit melancholy to see lanes, sidewalks, street lamps, and houses in the middle of that desolation. It was a cool autumn day when I visited and I recall the dead leaves, barren trees and unkempt yards and how they, as much as the derelict homes confirmed the long absence of any living person. I tried to see the town as it once was, a tiny but thriving community set—despite its purpose—in an idyllic location: children, their fathers at work in the nearby prison, laughing and playing on the tidy lawns and gardens,

house wives hanging laundry outside in the fresh summer sun and families enjoying a stroll in the warm evenings.'

In 1955, the Army built a NIKE missile base on a 10-acre plot on the north end of the island, one of 10 such facilities in the New York area (and the only one within city limits). By the end of the decade, however, the Soviet Union had shifted its strategic forces to ballistic missiles, rendering the NIKE obsolete; the base was closed in 1961. But other than the missiles themselves, the facility was left largely intact, and the rare visitor can still walk among their rusting armatures and sealed ventilation shafts. (And among the bleachers of Ebbetts Field, which were dumped nearby after the field was torn down.)

Access to Hart Island is strictly prohibited, and it takes an official pass or a heavy amount of bureaucratic wrangling to get permission to visit. Not surprisingly, the city doesn't want people snoop-ing around a mass grave (though Michael Douglas pays the island a visit in his less-than-memorable film *Don't Say a Word*). This hasn't stopped film-makers, though—in addition to *Don't Say a Word*, the z-grade horror flick *Island of the Dead*, starring Malcolm McDowell and Mos Def, is set almost entirely on Hart Island, where a group of people are trapped on the island and then attacked by man-eating flies.

Every once in a while, according to the Department of Corrections, a body will be ordered disinterred, usually because a relative has arrived to claim it. And not everyone who ends up in the pot-ter's field is unknown or forgotten; playwright and novelist Dawn Powell ended up there, as did Academy Award winner Bobby Driscoll—the former because no one wanted to claim the body, the latter because no one was there to identify him when he was found in an East Village tenement in 1968. 'The souls that rest there may have made great contribu-tions to the City, but we will never know them or be able to memorialize them,' said Alice Blank, a Man-hattan architect who has studied the city's lesser-

known islands. 'The act of city prisoners—another forgotten and isolated community—burying these souls is perhaps New York's most poignant and pro-found drama , one that none of us is entitled to see.'

For those not disposed to taking on the city gov-ernment in the hopes of winning the right to visit Hart Island, there's always Joel Sternfeld and Me-linda Hunt's 'Hart Island: Discovery of an Unknown Territory.' Sternfeld, a photographer, managed to gain virtually unfettered access to all parts of the island, and his black-and-white pictures render its various features -abandoned dormitories, leaf-strewn roads, rows upon rows of white burial mark-ers—in a stark, eerie detail.

Those who have been to Hart Island invariably refer to it as 'lonely' and 'creepy,' an island so full of the dead that it has, itself, ceased to exist in any real sense. Prisoners arrive, bury their daily load, and then leave quickly; no one stays very long. They hurry back to City Island, where, standing on the shore, you can still feel the loneliness, wafting across the water

*Published October 10, 2002.*

B.

## **Jewish Burial Societies in New York**

The following story appeared in the New York Times on August 3, 2009.

It illustrates the challenges facing many smaller cemeteries, especially those operated by fraternal organizations. The same challenges, however, face many cemeteries lacking outside sources of revenue.

## With Demise of Jewish Burial Societies,

## Resting Places Are in Turmoil

August 3, 2009

By PAUL VITELLO

Someone was buried in Florence Marmor's grave, and it was not Florence Marmor.

When Mrs. Marmor visited her deceased husband's cemetery plot in Flushing, Queens, one afternoon, she found that someone had been freshly buried in the spot next to his, where she had planned to rest someday. No one could tell her why.

Strange and wrenching discoveries like that have sprung up repeatedly in Jewish communities over the past few decades as families have discovered that the cemetery properties where they expected to be buried among spouses, children and parents are caught in a legal knot that no one can untangle.

The reason: the Jewish burial societies that sold the gravesites no longer have administrators. Founded by

the immigrant ancestors of the people caught in this bind, the societies, in effect, have died.

The problem has mainly plagued New York, Boston and other Northeastern cities where Jews arrived at the turn of the last century from Eastern Europe, bringing with them the tradition of dues-paying societies — usually organized by people from the same hometown — that bought and maintained cemetery plots.

Besides reducing burial costs, the societies held periodic meetings that became important social events for networking and keeping up with others from similar roots. Robust for decades, the associations lost members as descendants grew affluent, moved away and left a dwindling, aging few to keep the books and the cemetery lots in order.

Until recently, few religious or government officials took notice. But an accrual of painful scenes has convinced some of the need for intervention.

"There isn't a week that goes by that we don't have problems with this," said Richard Fishman, director of the New York State Division of Cemeteries, charged with regulating burial plots. "A person dies, and they can't get buried because there is no one left to sign the papers, or the guy in charge is 99 years old and in a nursing home."

There are no exact figures, but officials like Mr. Fishman and leaders of Jewish organizations estimate that while 20,000 or more burial societies once flourished in the Northeast, managing plots in hundreds of Jewish cemeteries, all but a few thousand are defunct.

By tradition, Jews must be buried within 24 hours of death. If the deceased is a member of a burial society or a descendant of members, relatives are supposed to contact an officer of the society, who verifies the person's membership and signs a permit allowing the

cemetery to open the assigned plot.

But Mrs. Marmor, 76, said that when she asked the cemetery director what happened to her plot, he told her it had been sold by the president of the burial society, who had since died.

"They couldn't do anything more for me," she said. After much stress, and with help from a lawyer, she ended up restarting the defunct association, the Trembowla Sisters Burial Society, and discovered to her relief that the plot on the other side of her husband was available.

Some burial society officers are reluctant — and not always reliable — inheritors of the job.

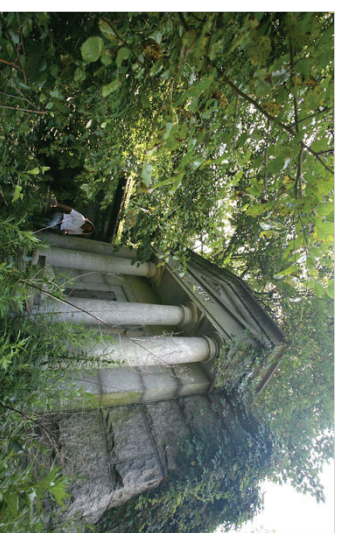
Sam Falk took over the Friends of Zion of Harlem Burial Society after his mother, for many years the society's acting president, entered an assisted-living residence on Long Island a few years ago. He shipped the society's file cabinets and cemetery maps to his home in Southern California.

"I tried to send out the notices and keep up," said Mr. Falk, 59, whose grandfather founded the society in 1911, "but to be honest, in the last few years, I didn't have the time."

He was rescued by a tiny agency of the New York State Insurance Department known as the Office of Miscellaneous Estates. Tucked into a cluttered corner of the state's Liquidation Bureau in Lower Manhattan, Miscellaneous Estates is where burial societies go to die. The agency took the burial society off Mr. Falk's hands after an elderly woman — worried that



Robin Kraus, manager of New York State's Office of Miscellaneous Estates, helps people obtain deeds to plots they bought through now-defunct burial societies.



At BaySide Cemetery in Ozone Park, Queens, a lack of funds and oversight had led to neglect.

## Jewish Burial Societies

he would not be able to provide her a plot next to her mother in a Staten Island cemetery — found a sympathetic cemetery administrator who referred her to Miscellaneous Estates.

Robin Kraus, the agency's manager, and her assistant, Alice Jenkins, have taken hundreds of burial societies into a sort of receivership over the past decade, collecting dues from members until the last one is buried. They move with practiced deftness through the thousands of ancient index cards, yellowing ledger books and rolled-up oilcloth cemetery maps entrusted to their care.

"What we do is step up and perform all the functions of a burial society until all the people entitled are buried," said Ms. Kraus, a lifelong civil servant who, as the child of Holocaust survivors, found an emotional home when she joined the bureau 15 years ago. Almost every Jewish cemetery in New York has her phone number on auto-dial.

Many family members who call are desperate and distraught, she said.

"You have to be able to deal with people who are hard of hearing, and oftentimes speak in thick accents," she said.

Mark G. Peters, who heads the quasi-public Liquidation Bureau, which protects consumers who hold policies with failed insurance companies, said the government viewed burial societies as a type of insurer. "They



Old ledgers and maps from the Jewish burial societies that have disappeared over the years.

## The New York Times

may be a historically anachronistic insurance product," he said, "but we are essentially the only safety net for people still depending on these societies."

Mark Wittlin, 53, remembered attending meetings with his father at a burial society in Brooklyn known as the Senate Association. Members would address one another with honorifics like "noble grand brother" and solemnly discuss financial and maintenance matters while he and other children prowled the rented hall.

When he graduated from college, his father and other members asked him to become an officer, but he declined. When his father died, they asked again and he declined again.

A lawyer took over the society. When the lawyer died a few years ago, Mr. Wittlin answered the door one day to find a young man there, several large shopping bags arrayed around him, with rolled-up maps jutting out: the records of the Senate Association.

"My uncle wanted you to have these," he says," Mr. Wittlin recounted. "He was the lawyer's nephew."

Mr. Wittlin said he tried to be a good president. But there were 60 remaining members, including some in nursing homes and some unaccounted for — though liable to pop up needing service at any time.

When someone told him about Robin Kraus, he went to see her. He took along the shopping bags. "I just don't have the energy for this," he told her.

She and Ms. Jenkins told him not to worry. They unpacked the records and maps, and told him they would take it from there.

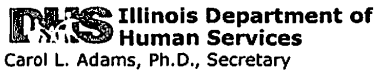
August 4, 2009

C.

## IDHS Guidelines on Personal Property

DHS: PM 07-03-05: Personal Property

<http://www.dhs.state.il.us/page.aspx?item=15031>



Carol L. Adams, Ph.D., Secretary

### **PM 07-03-05: Personal Property**

#### **WAG 07-03-05.**

Personal property is anything owned by a person that is not land or permanently affixed to land.

Personal items such as, clothing, personal effects, and household furnishings are **exempt**.

**Nonexempt** personal property includes:

- money in checking and savings accounts;
- cash on hand;
- stocks, bonds, savings certificates, and other securities;
- trust funds;
- motor vehicles;
- life insurance;
- cemetery lots and burial crypts;
- farms and small businesses;
- estate bequests; and
- miscellaneous assets.

The equity value of any nonexempt personal property owned by a unit member, must be verified and used when determining initial and ongoing eligibility. This includes any personal property that a client has a joint interest in.

Proceeds from the sale of personal property are considered a nonexempt asset except for estate bequests and stocks and bonds, which are considered as follows:

- **Estate Bequests** - Lump sum bequests from an estate are an asset. When a bequest or interest in an estate is in the form of regular income, consider it as income rather than an asset.
- **Stocks or Bonds** - If a stock or bond is sold at a profit, the profit portion of the sale price is income and not an asset. The remainder of the money is an asset.

D.

## How to Choose a Cemetery in Illinois

*There are thousands of cemeteries in Illinois. Most of them have operated for generations and some of them for centuries. Nothing like the events at Burr Oak has ever happened in Illinois before. If you have a loved one in an Illinois cemetery other than Burr Oak, then you can be assured that the cemetery must maintain a record of your loved one's location.*

### How do I choose a cemetery?

Usually a family considers to bury loved ones where other family members are already located. Consider the location of the cemetery: is it convenient for family visits? Consider whether it meets the requirements of your family's religion. Consider what, if any, restrictions the cemetery places on burial vaults, the type of monuments or memorials it allows, and whether flowers or other remembrances may be placed on graves and when.

Finally consider the care of the cemetery. Does it look well-maintained? What kind of impression do you get from the staff? Are the graves, roads, offices and fences in good shape?

Cost may be a consideration. Interment rights can be expensive, especially in metropolitan areas. At most, but not all, cemeteries you are required to purchase a grave liner, which will cost several hundred dollars. There are typically charges to open and close a grave for an interment. Verify if a cemetery is licensed for future care when you purchase your interment rights. These cemeteries are audited and monitored by the Illinois State Comptroller's Office.

### Are all cemeteries alike?

No, there are different kinds of cemeteries. There are religious cemeteries, which are owned by a church or religious organization; there are locally owned cemeteries which are owned by a city, township or county; there are private cemeteries which are owned by business owners; there are fraternal cemeteries, such as those for organizations like Masonic or Jewish fraternal burial associations; and there are veterans' cemeteries, which are dedicated to veterans and their families.

### What products and services do cemeteries offer?

Cemeteries offer a number of different arrangements. Interment rights, the traditional in-ground grave, are the most typical product, but there are also lawn crypts, columbarium niches and mausoleums.

Some cemeteries offer more affordable arrangements. One such option, that has been offered for generations, is multi-level burial. In this kind of interment, the deceased are buried in a row, one after the other. The cemetery still maintains the records, forever, and the marker remains at that grave, forever. Because less maintenance and labor is involved, this arrangement is for those who want an alternative to cremation.

### What can I do to make sure things are ok at my loved one's cemetery?

Visit your loved one's grave site. If you didn't buy a memorial, buy one to make it easier for you to find your loved one. Ask to see a copy of the cemetery's rules and regulations. If it is a condensed set, feel free to request and review the entire set.

Be patient. Everyone is very worried right now, and cemetery offices are responding to a flood of inquiries. Cemetery operator's and their staffs are caring people who want to be as helpful as possible..

### What if something looks wrong when I visit my loved one?

Ask at the office. Understand that cemeteries are works in progress; every time there is an interment, there will be some disturbance to the landscape. Sometimes the cemetery will temporarily move a marker to prevent damage; the marker may not be replaced for a time until the ground conditions allow.

### How can I check out a cemetery to see if there have been problems in the past?

Contact the office of the Illinois Comptroller; this office has responsibility for consumer complaints about cemeteries. Their web site is <http://www.ioc.state.il.us/office/ccbt/> and Consumers within Illinois can call the consumer hot-line toll-free at 1.877.203.3401. If you are calling outside Illinois, please call the general number at 312.814.2451. If consumers prefer, they can e-mail the staff at [ccbt@mail.ioc.state.il.us](mailto:ccbt@mail.ioc.state.il.us).

### Resources

The Federal Trade Commission offers a funeral guide for consumers: <http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro19.shtm>

# **SOUTHTOWNSTAR**

## **Law already says no grave robbing**

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July 16, 2009

The issue: Officials are calling for strict new regulations mandating how cemeteries do business - and creating new government layers to carry out this task.

We say: We don't need more bureaucracy. We need prosecution of this crime.

Decaying bodies dumped in a jumbled heap. Grave robbery. Desecration. Injustice and greed.

The Burr Oak Cemetery scandal is the stuff nightmares are made of.

So ... there ought to be a law, right?

There ought to be rules and regulations and someone with a clipboard to enforce them.

That's what some state officials are proposing.

Illinois Comptroller Dan Hynes calls for a plan to give the state new and needed oversight concerning cemeteries. Plenty of legislators are clamoring for the same.

Translation: "This is appalling. This is bad. The public is calling for heads on a pike. We should ... DO SOMETHING!"

Let's create new offices! New officials! New documents and processing systems! Let's pay for it all with new taxes and proudly proclaim we're leading the charge against this moral assault on our dearly departed, dead citizenry.

Except of course, grave robbing is already illegal.

It's time to step back here.

Such a stupid, likely isolated criminal scheme simply must not be allowed to create an entire squadron of cemetery functionaries - wandering with global positioning units to track the

mostly peaceful, mostly quiet, grave sites of hundreds of thousands of Illinoisans.

Indeed, it's this kind of misguided thinking that has led Illinois state government into the bloated, fetid bureaucracy it has become.

"No one regulates, licenses or oversees the operations of a cemetery, how bodies are buried, what type of people are allowed to handle bodies," Hynes told the Chicago Sun-Times.

And that is true.

And that is because we do not cede our bodies to Cook County or the State of Illinois when our last breath is drawn.

Be it a church or a private corporation, most of us deposit our bones on private land - with no expectation that some sort of taxpayer guarantee is backing our eternal rest.

It's a hard thing to face for a politician: Sometimes they can't fix our problems. Sometimes they just need to stick their noses back where they belong.

Yes, officials have a role here - to prosecute wrongdoers.

Act immediately and decisively on tips of future or past cemetery crimes.

Set a clear example that illegal acts will be punished.

And last but not least - let the rest of the dead rest in peace.

(<http://www.southtownstar.com/news/opinion/editorials/1668259,071609editcemetery.article>)

F.

## Wall Street Journal Article, July 18, 2009



THE WALL STREET JOURNAL.  
ONLINE

# Cemeteries Field Worried Calls

*Families Across Midwest Make Sure Body-Dumping Scandal Is an Isolated Incident*

July 18, 2009

By DOUGLAS BELKIN and  
CARRIE PORTER

Cemetery directors across the Midwest have been bombarded with anxious callers worried that a ghoulish scandal in a suburban Chicago burial ground isn't an isolated incident.

Authorities recently arrested four employees at Burr Oak Cemetery, alleging they dug up and dumped as many as 300 corpses to resell the used burial plots. The gruesome details have unnerved families as far away as Milwaukee and Kansas City, who have then flooded cemetery directors with concerns. So far, no other deception has turned up.

"We've been inundated with visitors trying to find loved ones that are buried here," said Vickie Hand, president of Washington Memory Gardens outside Chicago. "People are walking in here, one after the other, who haven't been here in 40 or 50 years, with this look of apprehension on their face."

Cook County Sheriff Tom Dart learned of the alleged grave-reselling scheme about two months ago, when his office was contacted by Perpetua Inc., the Arizona-based owner of Burr Oak, saying that the company was concerned about financial irregularities there.

Sheriff Dart said that when detectives initially went to the cemetery, they discovered a pile of bones from more than 100 bodies decomposing above ground in a fenced, overgrown area. He said

the corpses were dug up so that their plots could be reused. He estimates the scheme generated about \$250,000.

Burr Oak, founded nearly a century ago, was one of the first predominantly African-American cemeteries in the Chicago area. Among the historic figures buried there are civil-rights icon Emmett Till, blues legend Dinah Washington and heavyweight boxing champion Ezzard Charles.

On Friday, sheriff's deputies continued to scour four sections of the cemetery, which holds about 100,000 graves. They are searching for additional remains and trying to match discarded headstones to burial plots. Disintegrating and incomplete interment records and maps have slowed the process.

Since news about the cemetery broke, Sheriff Dart said he has been flooded with more than 55,000 requests from families looking for information about loved ones buried there. He said he isn't optimistic all the human remains will be identified.

"That will be very, very difficult," Sheriff Dart said Friday. He compared the process to identifying victims of a plane crash, but without the passenger manifest. "We don't even know who the universe of people is."

Illinois lawmakers this week considered additional regulation to require the exact location of interments on death certificates. But the legislative session expired before any action was taken.

Elsewhere in the Midwest, a De-

troit Memory Gardens employee said there has been a small influx of people who have come by to inspect their family plots. In St. Louis, Richard Lay of the Bellefontaine Cemetery said he has "heard a couple of comments that were joking in an offhand way, and I took it offensively," he said. "There are a lot of upset families, and I take it very seriously."

Harvey Lapin, general counsel of the Illinois Cemetery and Funeral Home Association, said cemetery owners around the state have been peppered with calls from different parts of the country asking, "You're not doing anything like this, are you?"

Linzay Kelly, an amateur genealogist in Houston with relatives buried in Burr Oak, said he has been concerned that something like this might happen for some time.

"There's just a panic out there that this isn't the only place this was happening," said Mr. Kelly, who has unsuccessfully tried to track down the graves of several family members who died in the 1940s and were buried in Illinois. "I've been to cemeteries where entire sections aren't there. It makes you suspicious."

Paula Everett, president of Mount Greenwood Cemetery, which isn't far from Burr Oak, said she has received about 150 calls and visits from anxious relatives since the news broke on July 8. "I can understand why people are nervous," she said. "I tell them to come down, we have every record back to day one in 1879."

G.

## **Harvey I. Lapin Resume**

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Harvey I. Lapin is a principal in the Northbrook, Illinois law firm of Harvey I. Lapin, P. C. He specializes in the areas of funeral, cemetery, cremation, tax and corporate law. He is a member of the Illinois, Wisconsin and Florida Bars, and is a Certified Public Accountant. He was born and raised in St. Louis, Missouri. He graduated from Northwestern University in 1960 with a Bachelor of Science degree, with a major in accounting. He graduated from Northwestern Law School in 1963.

He was employed at the Office of Chief Counsel of the Internal Revenue Service in Washington, D. C. from 1963 through 1968. He worked in the National Office of Chief Counsel of the IRS for three (3) years and thereafter served as a trial attorney in the Washington D.C. Office of the District Counsel. He worked extensively in the tax-exempt cemetery area and also received a Masters in Tax Law degree from Georgetown Law Center in 1967 while working for the Internal Revenue Service. Thereafter he was employed by and became a partner in a law firm in Chicago, Illinois, and subsequently established his own firm. He conducted his own practice until January 1, 1992 when he joined a 65-lawyer firm located in Chicago, Illinois. In October of 1993, that firm dissolved, and he re-established his own firm in Northbrook, Illinois.

He was a founding member of the Cemetery Advisory Board to the Comptroller of the State of Illinois and served on that Board for over 20 years. He is general or special counsel to numerous for-profit and not-for-profit cemetery corporations and profit funeral corporations throughout the country. He is General Counsel to the Illinois Cemetery and Funeral Home Association and several other state trade associations in the cemetery and funeral home industry. He was General Counsel to the Cremation Association of North America for over

30 years and has been Special Counsel to the International Cemetery, Cremation, and Funeral Association. He is a nationally recognized expert in the areas of Cemetery, Cremation and Funeral Law and during his legal career has been the primary draftsman or involved in drafting industry related legislation in over 40 states. He has also been involved in the drafting of federal tax legislation and FTC Funeral Rule regulations in connection with industry related matters. He was a consultant on cemetery, funeral and cremation legal areas for Ann Landers and has provided the same assistance to the authors of the "Dear Abby" and "Ask Amy" columns. He has represented clients in over two hundred and fifty transactions involving the purchase and sale of funeral homes, crematories and cemeteries, both profit and tax exempt.

He has been a member of the faculty of the John Marshall Law School in Chicago since 1969 and is presently teaching the subject of Tax Exempt Organizations in the Masters in Taxation Program. He was involved in the establishment of the Lawyer's Assistant Program at Roosevelt University in Chicago and served as the Chairman and member of the Advisory Board for that program. He is the First Chairman and now serves as a member of the Tax Exempt Subcommittee of the Section of Taxation of the Chicago Bar Association and presently is a member of the Tax Exempt Organization Committee of the Section of Taxation of the American Bar Association. He is a member of the TE/GE Council advisory group to the Great Lakes Region of the Internal Revenue Service.

He has been a lecturer for the Practicing Law Institute and chaired a seminar on the subject of tax-exempt organizations for them. He has been a speaker on various topics of interest to members of National, State and Local Funeral, Cemetery and

Cremation Associations on numerous occasions during his legal career. He has written numerous articles on the subject of taxation, cemetery and funeral law for National, State and Local Death Care Industry Associations and is presently the primary contributor to the "Cemetery and Funeral Business and Legal Guide" published by CB Legal Publishing Corporation in Northbrook, Illinois since 1972. He has been selected to be included in Who's Who in American Law, 1st through current editions, Who's Who in the Midwest, Who's Who in America, and Who's Who in the World.

H.

## **Consumer Bill of Rights — Cemeteries**

The following rights are already a matter of law in the State of Illinois.

No matter where you are buried or interred, you have the following rights:

1. You have the right to visit the cemetery to make arrangements for your loved one's interment.
2. You have a right to contract directly with the cemetery.
3. If you have a titled interment right, you have a right to a deed (or certificate of ownership) to that right.
4. You have a right to see the cemetery's records related to your loved one's interment.
5. You have a right to purchase a memorial or headstone, subject to the rules and regulations of the cemetery; but you are not obligated to purchase a memorial. You can purchase a memorial from the cemetery, or from a funeral home, or directly from a monument company.
6. You have a right to confidentiality: the information you provide the cemetery will be kept confidential.
7. You have a right to visit your loved one's resting place during the cemetery's posted hours.
8. You have the right to know what kind of on-going care, if any, the cemetery provides.
9. You have a right to review the cemetery's current rules and regulations before entering into any contractual arrangement and upon each visit."
10. You have a right to know the prices of rights and merchandise before you make any purchase from a cemetery.